

March 22, 2011

**By Electronic Delivery**

Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re: New York Independent System Operator, Inc., *Motion For Leave To File Comments And Comments Of New York Independent System Operator, Inc.*, Docket No. ER11-11-2842-000**

Dear Secretary Bose:

Please find attached for filing in the above-captioned proceeding the *Motion For Leave To File Comments And Comments Of New York Independent System Operator, Inc.* Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/ Sara B. Keegan

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Enclosures

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**New York Independent System Operator, Inc.    )**

**Docket No. ER11-2842-000**

**MOTION FOR LEAVE TO FILE COMMENTS AND COMMENTS OF NEW YORK  
INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) hereby respectfully requests leave to file comments in response to a filing by Fulton County, New York (“the County”)<sup>2</sup> posted in the above-referenced docket on February 16, 2011.<sup>3</sup> The NYISO requests that the Commission consider these comments in the event the Commission grants the relief requested by the County.

**I.     MOTION FOR LEAVE TO FILE COMMENTS**

To the extent the Commission deems the County’s request as one to which a response is not permitted, the NYISO requests the Commission to exercise its discretion to grant leave to the NYISO to submit these comments. The Commission has accepted responses not permitted by the Commission’s Rules of Practice and Procedure when they help to clarify complex issues, provide additional information that will assist the Commission, correct inaccurate statements, or

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2010).

<sup>2</sup> The County’s request is captioned, “Fulton County Department of Solid Waste and Innovative Energy LLC Request for Relief of Exemption for NYISO Class Year Study and Reimbursement of Costs Imposed by Such Study” (emphasis added). It is not entirely clear whether the filing is being made on behalf of the County or the County and the Developer. For ease of reference, however, the NYISO refers to the filing herein as “the County’s request.”

<sup>3</sup> The County’s submission is dated February 11, 2011, but the Commission file-stamped the document and posted it to the above-referenced docket on February 16, 2011.

provide otherwise helpful information to develop the record in a proceeding or assist in the Commission's decision-making process.<sup>4</sup>

In addition, to the extent that the Commission deems the NYISO to have submitted its response after the deadline provided in 18 C.F.R. § 385.213(d), the NYISO respectfully requests permission to file this response out-of-time. The Commission has exercised its discretion to grant extensions of time<sup>5</sup> where, as here, the applicant has good cause for the delay or the applicant advances reasons therefore that are reasonable and justify the requested extension.<sup>6</sup> Here, the NYISO has good cause for any delay in that the County's filing to which these comments relate was not posted in this docket until February 16, 2011, presumably because the filing was submitted without a docket number. As a result, the NYISO was not provided with notice of the filing until days after the date of the County's submission.

The Commission has exercised its discretion to grant an extension of time where, as here, the extension is requested in order to respond to a request of which the responding party was not aware until days after the request was filed.<sup>7</sup> The Commission allowed an extension of time in

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<sup>4</sup> See *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision-making process."); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process"); *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record . . .").

<sup>5</sup> See 18 C.F.R. § 385.213(D)(1).

<sup>6</sup> See *Pacific Gas and Electric Co., et al.*, 98 FERC ¶ 62,015 (2002) ("The reasons advanced by the [a]pplicants in support of their request are reasonable and justify the... requested relief."); *Kansas Gas Service v. Enbridge Pipelines KPC*, 98 FERC ¶61,342 (2002) (accepting answer to complaint filed out of time for good cause shown).

<sup>7</sup> *Sinclair Oil Corp. v. Rocky Mountain Pipeline System LLC and BP Pipelines (North America) Inc.*, Docket No. OR02-6-002 "Order Regarding Answer To Request for Subpoena" (Dec. 31, 2003) (J. Massey) (Unreported).

such a situation, “[b]ecause of the shortness of time involved before the answer period expires, and because it appears that [movants] have not been provided with a fair opportunity to respond to the [r]equest . . . .”<sup>8</sup> As in similar circumstances in which the Commission allowed an extension of time, allowing the NYISO an extension of time to provide these comments will not cause harm to the County. To the contrary, the NYISO’s comments serve only to clarify the County’s request and to provide the NYISO with the guidance it needs to implement the Commission’s Order if it grants relief to the County.

The NYISO respectfully requests that the Commission follow its precedent and accept the NYISO’s comments in this instance. The comments are limited in scope to clarifications the NYISO requests in the event the Commission grants the County’s request. The comments will clarify the record and assist the Commission in its deliberations, and, therefore, should therefore be accepted.

## **II. BACKGROUND**

The above-captioned docket was initiated by the NYISO with its February 7, 2011 filing. In its February 7 filing, the NYISO proposed revisions to its Standard Large Facility Interconnection Procedures contained in Attachment X to the NYISO Open Access Transmission Tariff (“OATT”) and to its Small Generator Interconnection Procedures contained in Attachment Z to the NYISO OATT.<sup>9</sup>

The NYISO’s first proposed modification is a revision to Attachment X designed to more equitably allocate the study costs from the Class Year Interconnection Facilities Study (“Class Year Study”) among the projects comprising a Class Year group of projects electing to be

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<sup>8</sup> *Id.*

<sup>9</sup> Capitalized terms not otherwise defined in this letter have the meaning set forth in Attachments S, X and Z of the NYISO’s Open Access Transmission Tariff (“OATT”).

evaluated for Energy Resource Interconnection Service (“ERIS”).<sup>10</sup> The second proposed modification is a revision to Attachment Z designed to limit the circumstances under which a Small Generator is required to enter a Class Year Study and thereby incur additional Class Year Study costs.

In its filing letter that accompanied the proposed tariff revisions, the NYISO requested an effective date of no later than March 1, 2011 for both proposed modifications. The NYISO requested this effective date in light of the NYISO’s evaluation of Class Year 2011, which began on March 1, 2011. The proposed tariff revisions are intended to apply to Class Year 2011.

On February 16, 2011, the County’s request was filed in the above-referenced docket related to the NYISO’s proposed tariff revisions.<sup>11</sup> In its request, the County urges the Commission to approve the NYISO’s proposed tariff revisions, but requests “a retroactive exemption from the recently adopted requirement for the NYISO Class Year 2009 Study.”<sup>12</sup> The County further explains the relief it seeks by asking the Commission “for consideration for [the NYISO’s proposed tariff revisions] to be made retroactive, so that the County could recoup the \$158,000 already expended to date for the Class Year Study costs.”<sup>13</sup> In order to clarify the

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<sup>10</sup> The NYISO offers two levels of interconnection service under its OATT: Energy Resource Interconnection Service (“ERIS”) and Capacity Resource Interconnection Service (“CRIS”). ERIS is the service provided by NYISO to interconnect the Generating Facility or Merchant Transmission Facility to the New York State Transmission System in accordance with the NYISO Minimum Interconnection Standard, to enable the New York State Transmission System to receive Energy and Ancillary Services from the Generating Facility or Merchant Transmission Facility, pursuant to the terms of the NYISO OATT.

<sup>11</sup> The County’s submission is dated February 11, 2011, but was submitted to the Commission with no indication of the docket number to which it related. The filing was posted to the above-referenced docket on February 16, 2011.

<sup>12</sup> *New York Indep. Sys. Operator, Inc.*, Docket No. ER11-2842-000, Fulton County Department of Solid Waste and Innovative Energy LLC Request for Relief of Exemption for NYISO Class Year Study and Reimbursement of Costs Imposed by Such Study, Feb. 16, 2011, at 1.

<sup>13</sup> *Id.* at 3.

requested relief in the event the Commission grants the County's request, the NYISO submits these comments for the Commission's consideration.

### **III. COMMENTS**

The NYISO takes no position on the above-referenced request by the County. Instead, in deference to the Commission's policy that answers to responsive pleadings be limited in scope, the NYISO is confining itself to the following clarifications it requests in the event the Commission grants the County the requested relief. In order to properly implement any relief the Commission may order with respect to the County, the NYISO respectfully requests that the Commission address the following issues in any Order granting the County's requested relief.

#### **A. Effective Date of the NYISO's Proposed Tariff Revisions**

The NYISO interprets the County's request as requesting (1) that the proposed tariff provisions concerning Small Generator entry into the Class Year process apply retroactively, but only as to the project at the NYISO's Interconnection Queue Number 245, "Fulton County Landfill" ("the Project"); and (2) that the Project be removed from the ongoing Class Year 2009 study. If the Commission grants such request, the NYISO understands that this would not impact the requested effective date of March 1, 2011 for the proposed tariff revisions modifying how Class Year study costs are allocated among Class Year members (concerning Local System Upgrade Facilities).

#### **B. Reallocation of Class Year 2009 Study Costs**

In its request, the County states that it seeks "to recoup the \$158,000 already expended to date for the Class Year Study costs."<sup>14</sup>

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<sup>14</sup> *Id.* at 3.

If the Commission concludes that the Project should be removed from Class Year 2009, the NYISO understands that the study costs currently allocated to the Project would be reallocated to the other projects that are members of the Class Year. The NYISO notes, however, that certain study costs – \$31,107.23 – that have been incurred in the Class Year 2009 study are directly associated with the County’s project’s interconnection. These study costs would have been incurred by the Project even if it had not been included in the Class Year study and, instead, completed its Facilities Study under the Small Generator Interconnection Procedures. Therefore, it appears appropriate that the Project remain responsible for that portion of the Class Year study costs.

The County also refers to \$942,000 in “interconnect fees,” which it states is “nearly four times the original \$250,000 interconnect fees quoted when the project was first started.”<sup>15</sup> These amounts appear unrelated to NYISO interconnection study costs.<sup>16</sup>

### **C. The Project’s Status in the Class Year Deliverability Study**

Under the proposed tariff revisions, a Small Generator subject to the deliverability requirement in order to be eligible to become an Installed Capacity supplier with CRIS rights must still enter the portion of the Class Year process that evaluates deliverability. While the County appears to be requesting that the Project be removed from Class Year 2009, it is important to note that the Interconnection Customer for the Project elected to enter the deliverability portion of the Class Year study. The NYISO notes that the County, the entity that submitted the request, is not the Interconnection Customer of record in the NYISO Interconnection Queue for the Project. Rather, Innovative Energy LLC is the Interconnection

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<sup>16</sup> *New York Indep. Sys. Operator, Inc.*, Docket No. ER11-2842-000, Motion for Leave to Intervene Out of Time, Motion for Leave to Answer and Answer of Niagara Mohawk Power Corporation d/b/a National Grid, Mar. 17, 2011, at 5-7.

Customer. Should the Commission grant the County's request, the NYISO requests that such Order clarify whether the Interconnection Customer will be given the option of remaining in or being removed from the deliverability portion of the Class Year study.

**D. Amendment to the Project's Interconnection Agreement**

If the Commission grants the County's request, the Project's Interconnection Agreement must be amended because the current Interconnection Agreement requires the Interconnection Customer to accept its cost allocation from Class Year 2009.<sup>17</sup>

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<sup>17</sup> See *New York Independent System Operator, Inc. and Niagara Mohawk Power Corp., Letter Order*, Docket No. ER10-554-000 (March 1, 2010) (accepting interconnection agreement effective as of the date of execution).



#### IV. CONCLUSION

Accordingly, for the reasons set forth above, the NYISO respectfully requests the Commission accept its comments and to consider these comments in making its decision on the County's request.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Rensselaer, New York, this twenty-second day of March 2011.

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